E 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB961]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Bureau of Land Management (BLM) for authorization to take marine mammals incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in **Request for Public Comments** at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Fowler@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq*.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is

limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq*.) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily

determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process and making a final decision on the IHA request.

Summary of Request

On August 30, 2021, NMFS received a request from the BLM for an IHA to take marine mammals incidental to the Punta Gorda Lighthouse (PGL) Stabilization Project in Humboldt County, California. The application was deemed adequate and complete on February 15, 2022. The BLM's request is for take of a small number of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) by Level B harassment only. Neither the BLM nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The PGL was established as an aid to navigation in 1912 along the northern California coast. While in use, the lighthouse station included the lighthouse, oil house, three residences, and numerous other small buildings typical of small military outposts. Although the lighthouse is located on the mainland, maintaining the station in the remote and rugged location along the coast proved to be too difficult and the U.S. Coast Guard decommissioned the lighthouse in 1951. The BLM assumed management of the site following the PGL's decommission but was unable to keep up with the maintenance and after the windy ocean environment took a toll on the site, the BLM intentionally burned down the wooden structures of the station. The concrete lighthouse and oil house were all that remained when the site was listed in the National Registry of Historic Places in 1976.

The BLM proposes to stabilize the lighthouse site, repair the remaining structures, and rebuild former structures.

Dates and Duration

The PGL stabilization and repair work will occur between June 1 and October 1, 2022. Work crews are expected to work 8 to 10 hours per day, Monday through Friday. However, weekend work may be necessary intermittently to meet work schedule objectives, for a total of up to 122 days of work. The proposed IHA would be valid from June 1, 2022 through October 1, 2022.

Specific Geographic Region

The PGL is located approximately 10 kilometers (km; 6.2 miles (mi)) southwest of Petrolia, California and 18 km (11.2 mi) south of Cape Mendocino, within the King Range National Conservation Area. The lighthouse is located along the Lost Coast Trail, which extends from the Mattole River to Shelter Cove, California, covering approximately 40 km (24.8 mi). The BLM would access the PGL by traveling along the coast from the north, originating at either the Windy Point Trailhead or the Trailhead at the Mattole Campground.

The Lost Coast Trail is the longest stretch of undeveloped coastline in California. The coastline includes stretches of varyingly rocky and sandy beaches, including a black sand beach at the southern end of the trail. The area between the coastal bluffs and shoreline is typically very narrow, with many stretches of the trail impassible when high tides the cliff. In some areas, including the area immediately surrounding the PGL, there is a slight terrace at the base of the bluffs, just above the beach, that is suitable for hiking and camping above the high tide line. Scattered hauled-out pinnipeds may be found on the beach throughout the Lost Coast Trail, and are concentrated at haulout sites, such as the beach below the PGL. Pinnipeds are most often found on the beach itself, but occasionally venture beyond the beach and onto the marine terrace (Wonderland Guides,

2019). Please see the **Description of Marine Mammals in the Area of Specified Activities** section below for a detailed description of the marine mammals that are known to haul-out at the PGL and surrounding areas.

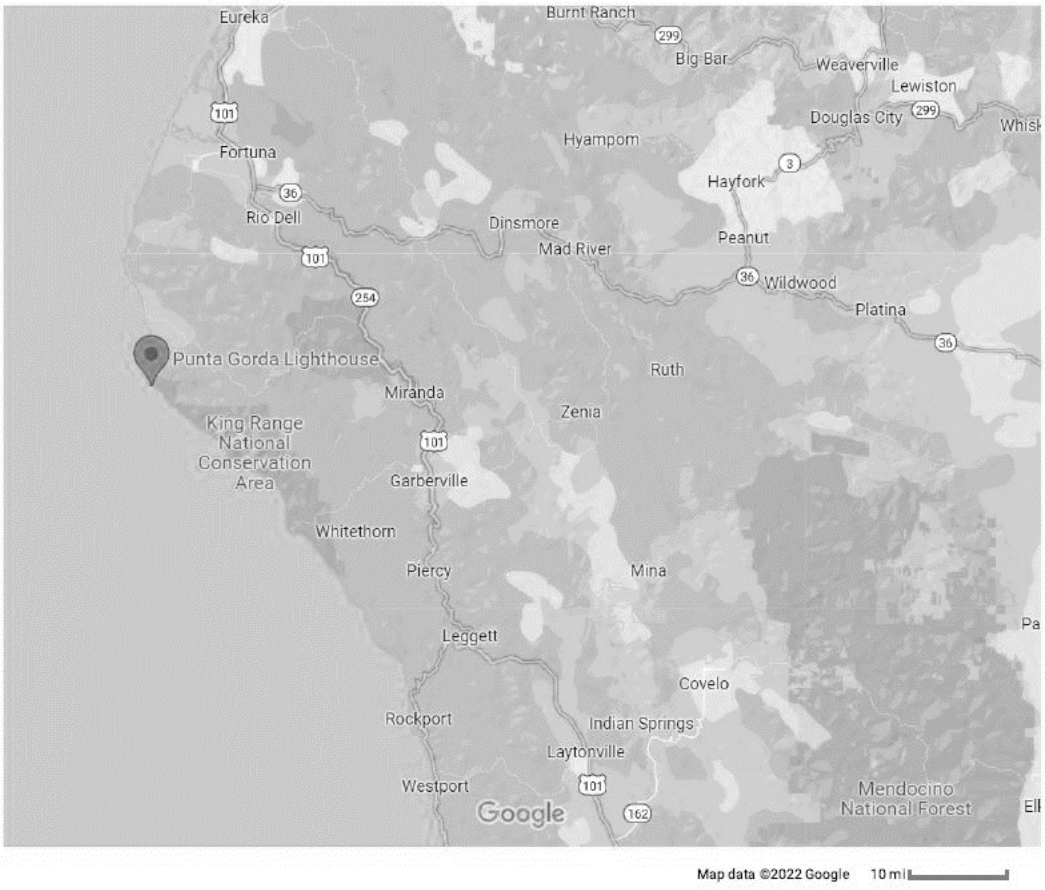

Figure 1. Location of the Punta Gorda Lighthouse in Humboldt County, California

Detailed Description of Specific Activity

Despite occasional maintenance by BLM staff and lighthouse advocates, the PGL buildings need extensive repairs. Both of the remaining buildings (the lighthouse and the oil house) are constructed of reinforced concrete. The lighthouse building has a metal second story that once housed the lens. The concrete has experienced spalling where large chunks of the walls and ceiling break off due to water intrusion followed by expansion of rusty reinforcement steel (re-bar). The northern portion of the oil house foundation has cracked and separated from the rest of the structure. In addition, all metal structures (*e.g.*, the second story of the lighthouse, the second story access stairs, above ground oil storage tanks) have experienced substantial corrosion.

The BLM proposes to conduct stabilization and repair work at the PGL in stages. As part of the initiation phase, a portion of the marine terrace north of the PGL would be designated for staging and support of construction activities (*e.g.*, parking vehicles, storing tools and materials, fuel storage and containment). A fence would be erected around the staging area and lighthouse station to prevent elephant seals from moving into the work zone.

The first stage of correcting the deficiencies in the PGL station would consist of lead paint remediation and demolition of the failing concrete and re-bar, followed by treating the remaining structure to prevent further corrosion. Next, the BLM would demolish the roof of the oil house along with the northwestern corner of the oil house foundation. Once the concrete demolition is complete, concrete forms would be erected and new concrete poured in place. The new concrete would include corrosion inhibitors and would be formed to mimic the visual characteristics of the existing structures. To further prevent against corrosion, a sealing elastomeric (or similar product) would be applied once the new concrete has thoroughly dried.

Some of the small metalwork on both floors of the lighthouse would be restored off sire and reinstalled during the project. The second story of the lighthouse would likely need to be repaired and restored onsite. In addition to the metalwork, the windows of the lighthouse would also be replaced. The new windows would likely be made of some form of plexiglass.

The public is only allowed to access the PGL site on foot, as there are no developed roads that reach the PGL. However, due to the substantial construction activities proposed, the BLM would use vehicles to drive along the beach and marine terrace to transport construction materials and personnel.

Equipment proposed for use in the PGL stabilization project include gas powered construction saws, various jack hammers, heavy equipment (likely a backhoe or small excavator), saws, and hand tools. Materials created during the demolition process would either be buried on site or transported to waste facilities by ground vehicles and/or helicopter lifts. The ground vehicles would include all-terrain vehicles (ATVs), Side by Side ATVs (UTVs), and trucks. Helicopters may be used to transport supplies faster than ground transportation would allow. Helicopters would not land at the work site, but would hover approximately 50-100 feet (ft; 15-30 meters (m)) above ground for a short duration (up to 5 minutes) while the sling load is disconnected.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see **Proposed Mitigation** and **Proposed Monitoring and Reporting**).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the

information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species)*.

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in Table 1 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.*, 2021; Muto *et al.*, 2021) and draft 2021 SARs (available online at:

https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports).

Table 1. Species Likely Impacted by the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller Sea Lion	*Eumetopias jubatus*	Eastern U.S.	-, -, N	43,201 (see SAR, 43,201, 2017)	2,592	112
California Sea Lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Family Phocidae (earless seals)						
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	13.7
Harbor Seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species (with four managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

California Sea Lion

California sea lions are distributed along the west coast of North America from British Columbia to Baja California and throughout the Gulf of California. Breeding occurs on islands located in southern California, in western Baja California, Mexico, and

the Gulf of California. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2017). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

California sea lions have not been observed hauled-out at the PGL, but have been seen swimming in the nearshore waters and at other haulouts along the Lost Coast Trail and are therefore considered reasonably likely to occur on the beaches surrounding the lighthouse and along the access route.

Steller Sea Lion

There are two separate stocks of Steller sea lions, the Eastern U.S. stock, which occurs east of Cape Suckling, Alaska (144° W), and the Western U.S. stock, which occurs west of that point. Only the Western stock of Steller sea lions, which is designated as the Western distinct population segment (DPS) of Steller sea lions, is listed as endangered under the ESA (78 FR 66139; November 4, 2013). Unlike the Western U.S. stock of Steller sea lions, there has been a sustained and robust increase in abundance of the Eastern U.S. stock throughout its breeding range. The eastern stock of Steller sea lions includes animals born east of Cape Suckling, AK (144° W), and includes sea lions

living in southeast Alaska, British Columbia, Washington, Oregon, and California. Any Steller sea lions in the PGL area are expected to belong to the Eastern U.S. stock.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al*., 2004; Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al*., 2007).

Like California sea lions, Steller sea lions have not been observed hauled-out at the PGL but have been observed at other haulouts along the Lost Coast Trail and are therefore considered reasonably likely to occur at the PGL or occur along the access route.

Northern Elephant Seal

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska to as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000 to 2,500 ft (305 to 762 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

The northern elephant seal breeding population is distributed from central Baja California, Mexico to the Point Reyes Peninsula in northern California. Along this coastline, there are 13 major breeding colonies. Northern elephant seals breed and give birth primarily on offshore islands (Stewart *et al*., 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed farther south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al*., 1993).

In mid-December, adult males begin arriving at rookeries, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately 4 weeks (Reiter *et al*., 1991). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs in April, when females and immature seals (approximately 1 to 4 years old) arrive at the colony to molt (a one-month process) (USFWS 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS 2013). The lowest numbers of elephant seals present at rookeries occurs during June, July, and August, when sub-adult and adult males molt. Another peak number of young seals returns to the rookery for a haul out period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994).

Northern elephant seals had occasionally been seen along the Lost Coast but a group of elephant seals colonized the beach below the PGL in 2013 and 2014, and the colony has grown rapidly since then. Approximately 165 elephant seal pups were born during the 2020-2021 breeding season, up from 110 the previous year. The highest attendance counted during the 2021 spring molt (*i.e.*, April) totaled approximately 700 individuals. The lowest elephant seal attendance of the year occurs in July and August. Juveniles and non-breeding females start to appear in September before the pregnant females begin arriving in mid-October (Goley *et al.*, 2021).

Harbor Seal

Pacific harbor seals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardii* in the northeast Pacific Ocean. The latter subspecies occurs along the California coast. The

California stock of harbor seals ranges from Mexico to the Oregon-California border. In California, 400-600 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al*., 2008).

Harbor seals mate at sea, and females give birth during the spring and summer, although the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (Lowry *et al*., 2008).

There are two large harbor seal haulout sites near the PGL, Sea Lion Gulch, approximately 2.5 km (1.5 mi) to the south, and the Mattole River Spit, approximately 6 km (3.7 km) to the north. A small group of harbor seals routinely haul-out on the beach near the intertidal zone and on the adjacent rocks below the PGL, approximately 120 m (394 ft) from the oil house. Up to 180 harbor seals have been observed at the PGL (Goley *et al.*, 2021). Harbor seals typically have small home ranges and the seals present at the PGL haulout are likely to be present across multiple days (Waring *et al.,* 2016; Wood *et al.,* 2011). Although harbor seals commonly use the beach near the PGL for resting, very few pups have been observed in the area and the PGL is not considered a rookery site for harbor seals.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The **Estimated Take** section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The **Negligible Impact Analysis and Determination** section considers the content of this section, the **Estimated Take** section,

and the **Proposed Mitigation** section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals may or may not impact marine mammal species or stocks.

Acoustic and visual stimuli generated by personnel working at the PGL and traversing the beach to access the work site, noise from construction equipment operating at the PGL, and helicopters hovering over the site to transport equipment and supplies may have the potential to cause behavioral disturbance.

Human Presence

The appearance of construction personnel may have the potential to cause Level B harassment of marine mammals hauled-out at the PGL and along the proposed access routes. Disturbance includes a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the BLM's construction personnel (*e.g.*, turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than two body lengths or longer, or if already moving, a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels 2 and 3 (movement and flush) are considered take, whereas level 1 (alert) is not. Animals that respond to the presence of BLM personnel by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Table 2. Disturbance Scale of Pinniped Responses to In-Air Sources to Determine Take

Level	Type of response	Definition

1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

* Only Levels 2 and 3 are considered take under the MMPA, whereas Level 1 is not.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al*., 1995; Southall *et al*., 2007; Weilgart 2007). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, l*et al*one the stock or population. However, if visual stimuli from human presence displace marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g*., Lusseau and Bejder 2007; Weilgart, 2007). Nevertheless, this is not likely to occur during the proposed activities since rapid habituation or movement to nearby haulouts is expected to occur after a potential pinniped flush.

Disturbances resulting from human activity can impact short- and long-term pinniped haulout behavior (Renouf *et al*., 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al*., 1984; Stewart, 1984; Suryan and Harvey, 1999; and Kucey and Trites, 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al*., 1984; Calambokidis *et al*., 1991; and Suryan and Harvey 1999) or lead Hawaiian monk seals (*Neomonachus schauinslandi*) to avoid beaches (Kenyon 1972).

In 2004, Acevedo-Gutierrez and Johnson (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the 7-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m), respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Acevedo-Gutierrez and Johnson, 2007). Although no boats would be used in the PGL Stabilization Project, we expect that hauled-out pinnipeds exposed to the BLM's vehicles and construction equipment would exhibit similar responses to those exposed to boats in the 2007 Acevedo-Gutierrez and Johnson study, and would quickly return to their haulout after the vehicles pass.

Noise

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this proposed rule. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal

(Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 µPa for under water, and the units for SPLs are dB re: 1 µPa. The commonly used reference pressure is 20 µPa for in air, and the units for SPLs are dB: 20 µPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square is the square root of the arithmetic average of the squared instantaneous pressure values. All references to SPL in this document refer to the rms unless otherwise noted. SPL does not take into account the duration of a sound. NMFS has developed acoustic thresholds for behavioral disturbance from airborne noise (90 dB for harbor seals and 100 dB for all other pinnipeds; NMFS 2018).

It is possible that the use of helicopters to transport materials, especially the helicopter hovering at the work site while the sling load is disconnected, would cause a subset of the marine mammals hauled-out at the PGL to react. There is little information available on the acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson, *et al*., 1995) and to NMFS' knowledge, there has been no specific documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions (Baker *et al*., 2012; Scheidat *et al*., 2011). The specific type and model of helicopter that may be used for work at the PGL is not yet known, therefore the predicted source level of noise from the helicopter that could be used to estimate distances to the behavioral disturbance threshold is also unknown. However, NMFS has considered that while noise from the helicopter is likely to affect the degree to which marine mammals respond to the stimulus, the physical presence of aircraft could also lead to non-auditory effects on marine mammals involving visual or other cues. Marine mammals in the

vicinity of the helicopter are likely to exhibit behavioral responses (*e.g.*, hasty dives or turns, change in course, or flushing and stampeding from a haulout site, as a result of visual detection of the helicopter) regardless of the received SPL.

There are few well-documented studies of the impacts of aircraft overflight over pinniped haulout sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al*., 2001). In 2008, NMFS issued an IHA to the USFWS for the take of small numbers of Steller sea lions and Pacific harbor seals, incidental to rodent eradication activities on an islet offshore of Rat Island, AK conducted by helicopter. The 15-minute aerial treatment consisted of the helicopter slowly approaching the islet at an elevation of over 1,000 ft (304.8 m); gradually decreasing altitude in slow circles; and applying the rodenticide in a single pass and returning to Rat Island. The gradual and deliberate approach to the islet resulted in the sea lions present initially becoming aware of the helicopter and calmly moving into the water. Further, the USFWS reported that all responses fell well within the range of Level B harassment (*i.e*., limited, short-term displacement resulting from aircraft noise due to helicopter overflights).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al*., 1995). Bowles and Stewart (1980) observed the effects of helicopter flights over California sea lions and harbor seals observed on San Miguel Island, CA;

animals responded to some degree by moving within the haulout and entering into the water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

In a study of the effects of helicopter landings at the St. George Reef Lighthouse on Northwest Seal Rock off the coast of Crescent City, California, Crescent Coastal Research (CCR) found a range of from 0 to 40 percent of all pinnipeds present on the island were temporarily displaced (flushed) due to initial helicopter landings in 1998. Their data suggested that the majority of these animals returned to the island once helicopter activities ceased, over a period of minutes to 2 hours (CCR, 2001). Far fewer animals flushed into the water on subsequent takeoffs and landings, suggesting rapid habituation to helicopter landing and departure (CCR, 2001).

Demolition and construction work at the PGL would include use of gas powered construction saws, jack hammers, heavy equipment (likely a backhoe or small excavator), saws, and hand tools. Fencing would be erected to prevent marine mammals from entering the work area. Received sound levels for seals hauled out on the beaches below the PGL are not likely to exceed the behavioral disturbance thresholds.

Stampede

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are particularly injurious when: (1) animals fall when entering the water at high-relief locations; (2) there is extended separation of mothers and pups; and (3) crushing of pups by large males occurs during a stampede. However, NMFS does not expect any of these scenarios to occur at the PGL as the proposed action would occur outside of the

pupping/breeding season for elephant seals and late enough in the harbor seal pupping season that any pups present would likely be old enough to accompany their mother during a flushing event, there are no cliffs at the PGL, and monitoring from IHAs for similar activities has not recorded stampeding events (*e.g.*, Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021).

The haulout sites at the PGL consist of low sloping sandy beaches with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled-out animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area or increase injury potential. Therefore, NMFS has determined the BLM's proposed activities pose no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations and thus there is no risk that these disturbances will result in Level A harassment or mortality/serious injury.

Anticipated Effects on Marine Mammal Habitat

The primary potential impact to marine mammal habitat associated with the construction activity is the temporary occupation of marine mammal habitat by BLM personnel and equipment but no permanent impacts would occur. The footprint of the PGL station would not change, and although vagrant elephant seals occasionally enter the compound, the lighthouse station itself is not considered to be suitable marine mammal habitat. During the stabilization project, a fence would be erected to exclude a portion of the marine terrace from use by elephant seals. The area expected to be fenced is usually unoccupied during the proposed construction window so few animals are expected to be displaced. Hauled out pinnipeds may temporarily leave the area if disturbed by acoustic or visual stimuli from project activities, but would likely return to the area once activities are concluded. The duration of displacement could vary from minutes, which would be

expected for animals disturbed along the access route that may return to the haulout once the construction personnel pass by (*e.g.*, Allen *et al*., 1985), to hours or days, for animals that flush from the beach below the PGL. The Lost Coast has miles of suitable undeveloped habitat for displaced animals to relocate during construction activities. The direct effects to pinnipeds appear at most to displace the animals temporarily from their haulout sites, and we do not expect, and have not observed during previous authorizations, that the pinnipeds would permanently abandon a haulout site as a result of the PGL stabilization project.

Indirect effects of the activities on nearby feeding or haulout habitat are not expected. Increased noise levels are not likely to affect acoustic habitat or adversely affect marine mammal prey in the vicinity of the project area because source levels are low, transient, well away from the water, and do not readily transmit into the water. It may be necessary for the BLM to bring a fuel storage tank to the PGL site to power generators and heavy equipment. Fuel would be stored behind fencing upland of the beach and the fuel tank would have a secondary containment system in place. To prevent chemical leaks, the BLM would inspect all equipment prior to attempting to cross Four Mile Creek while accessing the worksite. Debris generated by the construction activities (*e.g.*, removed concrete and metal structures) would either be buried onsite or removed by overland transit or helicopter lifts. Any materials not removed would be buried well upland of the beach, far away from any potential haulout areas. Buried material would consist of existing elements of the lighthouse station, no new materials would be introduced and left behind. NMFS does not expect that the proposed activities would have any long- or short-term physical impacts to pinniped habitat at the PGL.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to construction personnel and equipment, including helicopters used to transport materials. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. For the BLM's proposed activities, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses to in-air sources to determine take (Table 2). As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, that will inform the take calculations.

Researchers from Humboldt State University (HSU) regularly conduct census counts of pinnipeds at the PGL and surrounding areas along the northern California coast (*e.g.*, Goley *et al.*, 2021). Counts of northern elephant seals and harbor seals at the PGL

during the effective dates of the proposed IHA (June 1 through October 1) are presented below.

Table 3. Northern Elephant Seal Census Counts

2019 Counts		2020 Counts	
Date	Number of seals observed	Date	Number of seals observed
June 8	101	June 4	177
June 15	74	June 11	83
June 23	34	June 14	80
July 7	40	June 24	37
July 14	50	June 27	38
July 21	54	July 4	36
August 3	39	July 12	39
August 21	44	July 16	38
August 31	62	July 24	36
September 15	162	July 30	38
September 27	244	August 6	32
		August 9	28
		August 13	28
		August 20	27
		August 27	33
		August 30	48
		September 5	60
		September 19	133
		September 27	177

The average daily count of elephant seals at the PGL during the effective dates of the proposed IHA (June 1 through October 1) was 82.2 in 2019 and 61.5 in 2020. Across both years, the average daily count was 69.1 elephant seals (Goley *et al.*, 2021). A large portion of the elephant seals present at the PGL are uniquely tagged and dye stamped to identify individuals, and the same individuals were identified at the PGL haulout on multiple days.

Table 4. Harbor Seal Census Counts

2019 Counts		2020 Counts	
Date	Number of seals observed	Date	Number of seals observed
June 8	51	June 14	55
June 15	107	June 27	77

June 23	81	July 12	90
July 7	116	July 24	123
July 14	180	August 9	73
July 21	123	August 30	36
August 3	105	September 5	38
August 21	80	September 19	51
August 31	22	September 27	53
September 15	22		
September 27	28		

The average daily count of harbor seals at the PGL was 83.2 in 2019 and 66.2 in 2020. Across both years, the average daily count was 75.55 harbor seals (Goley *et al.*, 2021). The harbor seals present at the PGL are not tagged or otherwise clearly identifiable, but since harbor seals typically show high philopatry (Waring *et al.*, 2016; Wood *et al.*, 2011), researchers from HSU hypothesize that the harbor seal colony at the PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

To estimate the total number of northern elephant seals and harbor seals that may be present at the PGL and subject to behavioral disturbance from the PGL stabilization project, the BLM multiplied the daily count of each species averaged across the two years of census data (69.1 elephant seals and 75.55 harbor seals) by the maximum days of work at the PGL (122 days), for a total estimate of 8,431 northern elephant seals and 9,218 harbor seals taken by Level B harassment. This estimation assumes that all animals present would exhibit behavioral responses that are considered take (Levels 2 and 3 as described in Table 2). As described above, many of the seals present at the PGL are suspected or confirmed to be present across multiple days. Therefore, the above estimated

take numbers are considered to represent instances of take, not necessarily the number of individual seals that may be taken.

California sea lions and Steller sea lions have not been observed hauled-out at the PGL, but have been observed in the water near the PGL and at nearby haulouts along the Lost Coast Trail. The BLM assumes that no more than 5 individual California sea lions and Steller sea lions may haul-out at the PGL or along the access route and be taken by Level B harassment.

Table 5. Proposed Take by Level B Harassment by Species and Percentage of Each Stock Affected

Species	Stock	Proposed Take by Level B Harassment	Stock Abundance	Percent of Stock
Northern elephant seal	California breeding	8,431[a]	187,386	4.5
Pacific harbor seal	California	9,218[a]	30,968	29.8
California sea lion	U.S.	5	257,606	< 0.01
Steller sea lion	Eastern U.S.	5	43,201	0.01

[a] The proposed take represents the estimated number of exposures, which does not necessarily equate to the number of individuals that may be exposed.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed:

The work season has been planned to reduce the level of impact on elephant and harbor seals. The effective dates of the proposed IHA (June 1, 2022 through October 1, 2022) occurs when the elephant seal population is at its lowest and any harbor seal pups that may be on site would be old enough to be self-sufficient if the colony temporarily flushes into the water. No elephant seal pups would be present during the work season.

Whenever possible, the BLM would utilize the access route that begins at the Windy Point Trailhead, rather than the route that begins at the Mattole Campground, as that route requires a longer stretch of driving on the beach or marine terrace (approximately 5 km (3.1 mi)) where harbor seals are more likely to be hauled-out. The preferred route from the Windy Point Trailhead requires only 1.25 km (0.78 mi) of driving on the beach and marine terrace. Utilizing the access route with the shortest

amount of driving on the beach and marine terrace is expected to reduce the number of marine mammals that may be encountered and disturbed along the access route and minimize the impact of the vehicles on marine mammal habitat.

To the extent possible, the BLM would limit the daily number of vehicle trips between the project area and the contractor's offshore camp where additional tools and supplies would be stored in trailers or other storage containers. Additionally, the BLM would utilize helicopters to deliver construction equipment to the PGL work site to reduce the number of vehicle trips that would be necessary to conduct the proposed activities.

While accessing the project site, trained protected species observers (PSOs) would monitor ahead of the vehicle(s) path, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation (*e.g.*, change of course, slow down) is required. Vehicles would not approach within 20 m (65.6 ft) of marine mammals. If animals remain in the access path with no possible route to go around and maintain 20 m (65.6 ft) separation, personnel may exit the vehicle(s) to walk toward animals and intentionally flush them into the water to allow the vehicle(s) to proceed. To the extent possible, if multiple vehicles are traveling to the site, they should travel in a convoy such that animals are not potentially harassed more than once while the vehicles pass.

A fence would be erected to keep elephant seals from entering the construction area to limit disturbance and prevent accidental injury from vehicles and construction debris.

All helicopters associated with the project would slowly approach the work site and allow all marine mammals present to flush into the water before setting any hauled materials down on the ground.

The BLM must cease or delay visits to the project site if a species for which the number of takes that have been authorized for a species are met, or if a species for which takes were not authorized, is observed (*e.g.*, northern fur seals (*Callorhinus ursinus*) or Guadalupe fur seals (*Arctocephalus townsendi*)).

The BLM must monitor for offshore predators and must not approach hauled-out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are observed. If the BLM and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

At least one NMFS-approved PSO would travel to and from the construction site ahead of the work crew each day and serve as a lead monitor to record incidental take. PSOs would consist of BLM wildlife biologists, biological technicians, and interns, as well as King Range National Conservation Area staff. At least one PSO would monitor the beach surrounding the PGL during all construction activities.

PSOs must be approved by NMFS prior to beginning any activity subject to the proposed IHA. PSOs must have the following qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;

- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs must record the following information for each day of work:

- Date, time, and access route of each visit to the work site;
- Information on the weather, including tidal state and estimated horizontal visibility;
- Composition of marine mammals observed, such as species, sex, and life history stage (*e.g.*, adult, sub-adult, pup);
- The numbers (by species) of marine mammals observed during the activities;
- Estimated number of marine mammals (by species) that may have been harassed during the activities;
- Marine mammal disturbances according to a three-point scale of intensity (see Table 2);

- Behavioral responses or modifications of behaviors that may be attributed to the specific activities, a description of the specific activities occurring during that time (*e.g.*, pedestrian, vehicle, or helicopter approach), and any mitigation action taken; and
- If applicable, note the presence of any offshore predators (date, time, number, and species) and any mitigation action taken.

Reporting

The BLM would report all observations of marked or tag-bearing pinnipeds or carcasses and unusual behaviors, distributions, or numbers of pinnipeds to the NMFS West Coast Regional Office.

A draft marine mammal monitoring report would be submitted to MFS within 90 days after the completion of each work season, or 60 days prior to the requested issuance date of any future IHAs for projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS on the draft report, the draft report will be considered the final report.

In addition to raw sightings data, the report must include:

- A summary of the dates, times, site access route, and weather during all construction activities;
- The numbers (by species) of marine mammals observed during the activities, by age and sex, if possible;
- The estimated number of marine mammals (by species) that may have been harassed during the activities based on the three-point disturbance scale (Table 2);
- Any behavioral responses or modifications of behaviors that may be attributed to the specific activities (*e.g.*, flushing into the water, becoming alert and moving, rafting); and

- A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Reporting Injured or Dead Marine Mammals

In the event that the BLM or any other personnel involved in the activities discover an injured or dead marine mammal, the BLM would report the incident to the NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury were clearly caused by the specified activity, the BLM would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The BLM would not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects

on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 5, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Activities associated with the PGL stabilization project, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential takes could occur if individual marine mammals are present nearby when activity is happening.

No injuries or mortalities are anticipated to occur as a result of the PGL stabilization project and none are proposed to be authorized. The risk of marine mammal

injury, serious injury, or mortality associated with the proposed construction project increases somewhat if disturbances occur during pupping season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.*, through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. However, the proposed activities would occur outside of the elephant seal pupping season, therefore no elephant seal pups are expected to be present. Although the timing of the proposed activities would partially overlap with harbor seal pupping season, the PGL is not a harbor seal rookery and few pups are anticipated to be encountered during the proposed surveys. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. The proposed activities would occur late enough in the pupping season that any harbor seal pups present would likely be old enough to keep up with their mother in unlikely event of a stampede or other flushing event. The proposed mitigation measures (*i.e.*, minimum separation distance, slow approaches, and minimizing vehicle trips to the PGL) generally preclude the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as alerts or movements away from the lighthouse structure, including flushing into the water. Most likely, individuals will simply move away from the acoustic or visual stimulus and be temporarily displaced from the areas.

Monitoring reports from similar activities (*e.g.*, Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021) have reported no apparently consequential behavioral reactions or

long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors or result in permanent abandonment of the haulout site. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

Of the marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA and there are no known areas of biological importance in the project area. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary displacement from haulout sites. The Lost Coast area has abundant haulout areas for pinnipeds to temporarily relocate, and marine mammals are expected to return to the area shortly after activities cease. No adverse effects to prey species are anticipated as no work would occur in-water, and habitat impacts are limited and highly localized, consisting of construction work at the existing lighthouse station and the transit of vehicles and equipment along the access route. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from the BLM's PGL stabilization project will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment is anticipated or proposed to be authorized;
- Few pups are expected to be disturbed, and would not be abandoned or otherwise harmed by other seals flushing from the area;
- Effects of the activities would be limited to short-term, localized behavioral changes;
- Nominal impacts to pinniped habitat are anticipated;
- No biologically important areas have been identified in the project area;
- There is abundant suitable habitat nearby for marine mammals to temporarily relocate; and
- Mitigation measures are anticipated to be effective in minimizing the number and severity of takes by Level B harassment, which are expected to be of short duration.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where

estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one third of the estimated stock abundance of all species (in fact, take of individuals is less than 5 percent of the abundance of all of the affected stocks except Pacific harbor seals, see Table 5). This is likely a conservative estimate because it assumes all takes are of different individual animals which is likely not the case. Using tags and dye stamps, researchers from HSU have identified individual northern elephant seals across several days of monitoring at the PGL. Although harbor seals observed at the PGL are not typically tagged or marked, HSU researchers suggest that the harbor seals seen hauled-out at the PGL are the same individuals that move between Punta Gorda and other nearby haulouts. Therefore, many individuals that may be taken by Level B harassment are likely to be the same across consecutive days, but PSOs would count them as separate takes across days.

Based on the analysis contained herein of the prop20osed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking

of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq*.) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the BLM for conducting the PGL stabilization project in Humboldt County, California between June 1 and October 1, 2022, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed PGL stabilization project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature

citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the **Description of Proposed Activities** section of this notice is planned or (2) the activities as described in the **Description of Proposed Activities** section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 21, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

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